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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

DOMINIC COBARRUVIAZ, ARLIN
GOLDEN, JOHN REILLY, CHRISTO-
PHER RUSSELL, SUSAN BANNON,
BATYA WEBER, AND DEREK
WILLIAMS, Individually, and On Behalf
of All Other Similarly Situated Employees,
Plaintiffs,
v.
MAPLEBEAR, INC., dba INSTACART;
AND DOES 1 through 100, inclusive,
Defendants.

Case No. 3:15-cv-00697-EMC

**DECLARATION OF ROBERT S. ARNS IN
SUPPORT OF PLAINTIFF'S
ADMINISTRATIVE MOTION FOR
LEAVE TO FILE SURREPLY**

Date: August 20, 2015

Time: 1:30 p.m.

Judge: Hon. Edward M. Chen

Ctrm: 5

1 I, Robert S. Arns, declare:

2 1. I am a partner with The Arns Law Firm, one of the firms serving as Plaintiffs'
3 counsel herein. I make these statements based on personal knowledge and would so testify if
4 called as a witness at trial.

5 2. I am a member in good standing of the bar of the State of California, as well as the
6 U.S. District Courts in California.

7 3. This Declaration is submitted in support of Plaintiffs' Administrative Motion For
8 Leave To File Surreply.

9 4. Attached hereto as Exhibit 1 is a true and correct copy of the Declaration of
10 Shannon Liss-Riordan. Ms. Liss-Riordan is one of the attorneys representing Donna Busick in the
11 class arbitration pending against Instacart in Boston, MA. Ms. Liss-Riordan submits this
12 declaration to clarify the sequence of events that led to the *Busick* arbitration.

13 5. On the afternoon of August 12, 2015, I communicated to counsel for Defendant,
14 Ben Berkowitz, Rachel Meny, and Ryan Wong, by way of e-mail, that Plaintiffs would be
15 seeking permission from the Court to file a surreply in connection with the pending Motion to
16 Compel Arbitration. I explained the grounds therefore as well. At 2:00pm on August 13, 2015, I
17 met and conferred via telephonic conference with Mr. Berkowitz and Mr. Wong about whether
18 they would stipulate to this filing. Mr. Berkowitz stated that Instacart would likely object to
19 Plaintiffs' request for leave to file a surreply. Later in the evening, on August 13, 2015, I
20 provided a copy of Plaintiffs' Surreply (Exhibit A to Plaintiffs' Administrative Motion For Leave
21 to File Surreply). Mr. Berkowitz stated he will review the document and inform me within 24
22 hours whether Instacart will object to the filing of this motion.

23 I declare under penalty of perjury under the laws of the United States that the foregoing is
24 true and correct.

25 Executed this 13th day of August, 2015,
26 at San Francisco, California.

27
28
DECLARATION OF ROBERT S. ARNS IN SUPPORT OF
PLAINTIFFS' ADMINISTRATIVE MOTION FOR LEAVE
TO FILE SURREPLY, CASE NO. 3:15-CV-00697-EMC

Exhibit 1

Robert S. Arns, State Bar No. 65071, rsa@arnslaw.com
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Attorneys for Plaintiffs

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

DOMINIC COBARRUVIAZ, ARLIN GOLDEN,
JOHN REILLY, CHRISTOPHER RUSSELL,
SUSAN BANNON, BATYA WEBER, AND
DEREK WILLIAMS, Individually and On Behalf
of All Others Similarly Situated Employees,

Plaintiffs,

vs.

MAPLEBEAR, INC. dba INSTACART; AND
DOES 1 through 100, inclusive;

Defendants.

Case No. C15-0697 EMC

**DECLARATION OF SHANNON LISS-
RIORDAN IN SUPPORT OF
PLAINTIFFS' OPPOSITION TO
DEFENDANT'S MOTION TO
COMPEL INDIVIDUAL
ARBITRATION, STAY INDIVIDUAL
CLAIMS, AND DISMISS
CLASS/REPRESENTATIVE CLAIMS**

JUDGE: Hon. Edward M. Chen
DATE: August 20, 2015
TIME: 1:30pm


1 I, Shannon Liss-Riordan, Esq. hereby state and declare:

- 2 1. I am a partner with the law firm of Lichten & Liss-Riordan, P.C. in Boston,
3 Massachusetts. I have personal knowledge of the facts stated in this declaration, and
4 if called upon to testify, could and would competently testify thereto.
- 5 2. On June 30, 2015, I filed a class arbitration complaint against Maplebear, Inc. d/b/a
6 Instacart with JAMS on behalf of Donna Busick, individually and on behalf of other
7 Instacart shoppers and drivers who have worked in Massachusetts, challenging the
8 company's misclassification of them as independent contractors.
- 9 3. Before filing the complaint, I reviewed and evaluated Instacart's arbitration
10 agreement, which Ms. Busick had signed.
- 11 4. I believed that Instacart's arbitration agreement contained a number of
12 unconscionable features, which could subject it to not being enforced in court.
13 Those features are spelled out in Plaintiffs' Opposition to Defendant's Motion to
14 Compel Arbitration in this case, *Cobarruviaz et al v. Maplebear, Inc. dba Instacart*,
15 Case No. C15-0697 EMC (N.D. Cal.) (Dkt. 52), and I agree with the points raised
16 therein.
- 17 5. I nevertheless chose to file the *Busick* complaint in arbitration, as the arbitration
18 agreement does not contain a class action waiver.
- 19 6. In making this decision, I took the chance on behalf of Ms. Busick and the putative
20 class that Instacart would waive the unconscionable terms of the agreement, for
21 example, that the workers would not be required to split the cost of arbitration.
- 22 7. After filing the arbitration demand, I learned that Instacart would not require Ms.
23 Busick to advance half of the costs of arbitration or arbitrate the case in San
24 Francisco.
- 25 8. Of course, as this Court has noted, a party cannot cure an unconscionable contract by
26 agreeing not to enforce an unconscionable term at a later date (after a complaint has
27 been filed). *See Mohamed v. Uber Technologies, Inc.*, C.A. No. 14-5200 (N.D. Cal.)
28 (Dkt. 70), at 31-32 ("This after-the-fact concession cannot render the delegation
clause conscionable. As the Supreme Court in *Armendariz* explained, whether a
party is now willing to excise an unconscionable clause in a contract "does not

1 change the fact that the arbitration agreement as written is unconscionable and
2 contrary to public policy.”), citing *Armendariz*, 24 Cal. 4th 83, 125 (2000) (internal
3 quotation marks and citation omitted), and *Sonic-Calabasas*, 57 Cal. 4th 1109, 1134
4 (2013) (explaining that under California law, unconscionability is measured by
5 “whether a contract provision was unconscionable at the time it was made”).

- 6 9. Thus, my firm’s having filed this arbitration complaint does not demonstrate that
7 Instacart’s arbitration clause is not unconscionable. I simply made a calculated
8 choice on behalf of my client and the putative class to attempt to proceed in
9 arbitration notwithstanding the unconscionable terms.

10 I declare under the penalty of perjury under the laws of the United States of America
11 that the foregoing is true and correct, and that if called upon to testify, I could verify the
12 accuracy of the same. This document was executed on August 12, 2015 in Boston,
13 Massachusetts.

14 
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